

From: Paul Komarek
To: Microsoft ATR
Date: 1/24/02 2:30am
Subject: Microsoft Settlement

To whom it may concern,

I am a doctoral student in Algorithms, Combinatorics, and Optimization at Carnegie Mellon University. My research involves the fields of artificial intelligence and signal processing. I am professionally and personally tied to the information technology economy as a researcher, administrator, purchasing assistant, and as an ordinary computer user. For this reason I have kept close watch on the most recent Department of Justice v. Microsoft antitrust trial. I have read transcripts from the depositions and trial, numerous court reporters' views, and many related antitrust and computer decisions. In every way reasonable, I have attempted to familiarize myself with the applicable laws, economies, and social structures that surround this and other information technology cases. I do not claim to be a legal expert; however, I am a citizen of this country, a member of this society, and as such appreciate this opportunity to make my views on the proposed settlement known.

Two courts have already stated their legal opinions. Both determined that Microsoft is a monopolist in the relevant economies. Both ruled that Microsoft has illegally abused their monopoly position. Furthermore, this isn't the first time that Microsoft's behavior in certain computer markets has been called into question by the Department of Justice. Because the readers of this letter should already be familiar with this background, there is no need for me to recall details. Instead, I wish to summarize my feelings about Microsoft's position in our society, and why I do not believe the proposed settlement will prevent illegal and unacceptable social behavior by Microsoft.

The fundamental purpose of our capitalistic economy is to create efficient markets which serve the needs of the society. The preferred mechanism for creating efficient markets is fair competition. Microsoft's past and present behavior suggest that they have no interest in fair, or even legal, competition. They have been convicted of stealing another company's software (e.g. Stac Corporation); they have attempted to circumvent law with respect to fair employment practices regarding temporary workers; they have been convicted of violating Java license agreements with Sun Corporation with the intent to destroy the benefits to our society that a platform-neutral programming language might bring; they have purposefully deceived customers with respect to interoperability of their software with competitors' software (e.g. the fake errors reported by Windows 3.0 when run on Digital Research's DR-DOS operating system, as documented by the pre-trial documents in Caldera v. Microsoft); they knowingly and purposefully falsified evidence during the recent Department

of Justice v. Microsoft hearings; they have publicly disparaged United States courts, and refuse to accept the guilty verdict received by the lower and appellate courts; they continue to use their monopoly in the operating system market to drive other Microsoft products (e.g. the new Windows Media Player). Clearly I am leaving out many details and further transgressions of the law and appropriate social behavior by Microsoft. My point is that Microsoft is an unsportsmanlike cheater in our economy, has shown and continues to show no interest in reforming their behavior.

Microsoft's failure to admit or even accept the courts' guilty verdicts suggests that a strong sentence, or settlement if possible, is needed to end Microsoft's antisocial behavior. It is clear that the proposed settlement is an attempt to bring quick, strong remedy to the ailing markets Microsoft has stifled. However, the proposed settlement is far too complex, with too many exceptions to too many rules, to be enforceable without many long and expensive legal battles in the future. Of particular importance are provisions relating to which programming interfaces do not need to be disclosed. Quoting from the proposed settlement,

"No provision of this Final Judgment shall: 1. Require Microsoft to document, disclose or license to third parties: (a) portions of APIs or Documentation or portions or layers of Communications Protocols the disclosure of which would compromise the security of a particular installation or group of installations of anti-piracy, anti-virus, software licensing, digital rights management, encryption or authentication systems, including without limitation, keys, authorization tokens or enforcement criteria;"

and these programming interfaces may be withheld from any part failing to

"meet[] reasonable, objective standards established by Microsoft for certifying the authenticity and viability of its business, (d) agree[] to submit, at its own expense, any computer program using such APIs, Documentation or Communication Protocols to third-party verification, approved by Microsoft, to test for and ensure verification and compliance with Microsoft specifications for use of the API or interface."

(these sections of the proposed settlement are quoted from an article in an online information technology news service). It is clearly, plainly stupid to allow Microsoft to establish security standards which apply only to products released by their competitors. Not only is this unfair in the best traditions of Microsoft, but there is no indication that Microsoft is qualified to establish reasonable security standards. Furthermore, this wording can easily be construed as allowing Microsoft to withhold programming interfaces from individuals whose work is not associated with a business. This should not be ignored at this time when the viability of volunteer-driven software projects is being tested in our society. Though

easily overlooked, charitable works by computer hobbyists have an important role in our society, and a significant impact on our economy. For instance the Apache webserver software, which currently dominates the web server market, is not owned or controlled by a business. However, it competes directly with Microsoft's commercial Internet Information Server webserver software. It does not require stretching one's imagination to see that Microsoft could use the exceptions above to disadvantage the freely available and redistributable Apache webserver software. Microsoft would only need to identify a programming interface as being related to financial transactions of any sort to invoke the security exemption, and could then deny information about their programming interfaces to the volunteer programmers participating in the development and maintenance of the Apache webserver software.

The proposed settlement is of such complexity that any enforcement will be thwarted by arguments about every fine point. I have already established that Microsoft has repeatedly disregarded the best interests of our society when making their business decisions. It is my belief that Microsoft will use the proposed settlement as a legal defense for future antisocial behavior, by manipulating technical and legal interpretations in a manner that violates the spirit of the proposed settlement. Furthermore, I do not believe that the proposed settlement adequately anticipates this behavior and provides appropriate enforcement provisions. I am not proposing any specific changes to the proposed settlement, as I believe the entire construction is flawed.

That the Department of Justice has agreed to this proposed settlement deeply worries me. In my eyes, it appears that the Department of Justice has grown tired of prosecuting their case, perhaps for political reasons. Therefore, I encourage our government and country to pursue a sentence for Microsoft which is created through thorough, and above all, open proceedings guided by Judge Kollar-Kotelly. I believe that this is our only hope for a sentence which adequately addresses Microsoft's illegal and antisocial behavior.

Sincerely,

Paul Komarek

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